

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6894 OF 1997

with

CIVIL APPLICATION NO.348 OF 1998

in

SPECIAL CIVIL APPLICATION NO.6894 OF 1997

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

SMT.JYOTIBEN CHANDRASEKHAR SHINDE

VERSUS

STATE OF GUJARAT & ORS.

Appearance:

MR KA PUJ for the Petitioner

MR ND GOHIL, AGP for Respondent-State

MR PK JANI for Respondent No.4

Coram: S.K. Keshote,J

Date of decision:08/05/1998

#. Heard the learned counsel for the parties.

#. The petitioner, Smt.Jyotiben Chandrasekhar Shinde, filed this petitioner in capacity of a President of the Kadi Municipality and challenge has been made to the Show Cause Notice which has been given to the petitioner by respondent No.1 dated 1.9.97 directing the petitioner to show cause within fifteen days from the date of receipt of the same as to why action u/s.263(1) of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'Act 1963') should not be taken to dissolve the municipality on the ground that the municipality has failed to perform the statutory duties under the Municipalities Act and has misused/abused the power vested into it and has also violated the condition No.4 of the order dated 17.10.90 with regard to a portion of Kadi-Detroj road passing through Kadi Municipality and has also not obtained prior permission of Roads and Buildings Department nor has taken into account rules and regulations of Ribbon Development, and has not stopped the construction of shopping centre on this road inspite of the fact that Executive Engineer has instructed not to do so and has also not obeyed the order passed by the Collector on 3.10.96. This Show Cause Notice was received admittedly by petitioner on 9.9.97.

#. Instead of replying to the Show Cause Notice, the petitioner approached to this Court by filing this Special Civil Application. This Court, on 22.9.97, has ordered for issuing notice to the respondents and by way of interim relief, it has been directed that if any order comes to be passed against the petitioner, it will not be implemented until then. Today in the Court, the learned counsel for the State submitted on the record of this Special Civil Application, a copy of the order of the State Government dated 22nd December 1997 under which the Kadi Municipality was ordered to be superseded. After this order, the petitioner filed a Civil Application No.348 of 1998 before this Court and in this Civil Application, prayer has been made that the permission be granted to substitute the name of the petitioner from Smt.Jyotiben S.Shinde to Shri Bhupendrabhai A. Parikh as President of Kadi Municipality and to pursue the above proceedings. Further prayer has been made to stay the operation, implementation and execution of the order passed by Respondent No.1 on 22.12.97, copy of which has been submitted by the learned counsel for the respondent-State today in the Court and the copy of the same has also been filed by petitioner alongwith this

Civil Application. So in the Civil Application, twofold prayers have been made. One for substitution of another person in place of present petitioner and second for stay of the order dated 22nd December 1997. In the Special Civil Application, prayer has been made for setting aside or quashing of the Show Cause Notice and further prayer has been made for issuing writ of Prohibition restraining the respondent No.1 from passing any order pursuant to the aforesaid Show Cause Notice. So in the Special Civil Application, there could not have been any prayer for quashing of the order which has to be passed ultimately in the proceedings. In the Civil Application, the petitioner has not prayed for amendment of the Special Civil Application and to challenge the order dated 22nd December 1997. In the Civil Application only prayer which has been made is for stay of operation or implementation or execution of the said order and not for quashing of the said order. The Show Cause Notice, which is the subject matter of challenge in the Special Civil Application has now been culminated in final order and as such, this Special Civil Application has become infructuous. The petitioner has to challenge the final order passed and for that challenge two course would have been available to the petitioner, i.e. either to amend the Special Civil Application or to file fresh Special Civil Application, but the petitioner has not chosen any of these courses and she felt contended only by making an application by way of Civil Application for stay of the operation, implementation and execution of the order dated 22nd December 1997. Even the prayer has not been made for amendment of the Special Civil Application giving out therein necessary grounds for challenge to the order dated 22nd December 1997. The Special Civil Application, after the respondents passed the final order, in the form as it is framed and to the extent where the prayer has been made therein, now no more survive. The subject matter of challenge in the Special Civil Application also no more survive as the Show Cause Notice merges in the final order passed on 22nd December 1997 and unless that order is challenged, I fail to see how these proceedings can be allowed to continue. The Civil Application is not a substantive petition but it is only an interlocutory application in the main Special Civil Application. Otherwise also, the petitioner cannot make a prayer in the Civil Application beyond the scope and subject matter of the Special Civil Application. I fail to understand how without challenging the order dated 22nd December 1997, and without making any prayer for quashing of the said order by way of Civil Application, a prayer can be entertained and granted for stay of the operation, implementation and execution of

the aforesaid order.

#. Be that as it may, otherwise also, I am satisfied that this Special Civil Application filed by the petitioner is without any merits. In the case of Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors., reported in (1996)1 Supreme Court Cases 327, the Apex Court held that a writ petition against the Show Cause Notice is normally not maintainable. The relevant observation of the Apex Court made in the aforesaid case is as under:

"10. We are concerned in this case, with the entertainment of the writ petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is no attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext.P-4 notice is ex facie a 'nullity' or totally "without jurisdiction" in the traditional sense of that expression -- that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution of India against a show-cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."

#. The provisions of Section 263 of the Act 1963, provides that, where in the opinion of the State Government, a municipality is not competent to perform, or deliberately makes default in the performance of the duties imposed on it by or under this Act or otherwise by law or exceeds or abuses its powers, the State Government may, after giving the municipality an opportunity to render an explanation, by an order published, with the

reasons therefor, in the Official Gazette, declare the municipality to be incompetent or in default, or to have exceeded or abused its powers, as the case may be and may dissolve such municipality or supersede it for such period not exceeding two years as may be specified in the order. So on reading the aforesaid provisions, it cannot be said that the Show Cause Notice given by respondent No.1 to the petitioner was without any authority of law. The State Government has powers to issue Show Cause Notice where the municipality has defaulted in performance of duties as provided u/s.263 of the Act 1963.

#. This matter is squarely covered by the decision of the Apex Court in the case of Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh & Ors. (supra) and this petition in which a Show Cause Notice has been challenged by the petitioner is not maintainable. In the result, this Special Civil Application and the Civil Application fail and the same are dismissed. Notice in the Special Civil Application issued by this Court is discharged. Ad-interim relief, granted by this Court in the Special Civil Application is vacated. Rule issued in the Civil Application is discharged. No order as to costs.

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(sunil)